

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations)

(Fort Bridger, Wyoming and Hyrum, Utah))

MM Docket No. 99-232

RM-9321

RECEIVED

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

M. Kent Frandsen ("Frandsen"), permittee of FM radio broadcast station KNYN, Fort Bridger, Wyoming ("KNYN"), by his attorneys, hereby submits his reply comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM"), released June 25, 1999, and in response to the comments filed by KGNT, Inc. ("KGNT") in opposition to the Commission's *NPRM* to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 256C3 from Fort Bridge, Wyoming to Hyrum, Utah.¹

¹ In its Comments, KGNT attempts to argue that the allotment will violate the Commission's multiple ownership rules. The Commission has consistently stated, however, that matters, such as multiple ownership, "are more appropriately addressed at the application, as opposed to the allotment, stage." *Kenansville, Florida*, 10 FCC Rcd 9831 (1995); *see also Morristown, New York*, 5 FCC Rcd 6976 (1990).

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INTRODUCTION

L. Topaz Enterprises, the former licensee,² filed a Petition for Rule Making ("Petition"), requesting that the Commission amend its FM Table of Allotments to downgrade from Channel 256C1 to Channel 256C3 at Fort Bridger, to reallocate Channel 256C3 from Fort Bridger to Hyrum, Utah, as that community's first local service, and to modify KNYN's license accordingly to specify Hyrum as its community of license. On June 25, 1999, the Commission released its *NPRM* proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Fort Bridger, Wyoming	256C1	-----
Hyrum, Utah	-----	256C3

The Commission noted that reallocating Channel 256C3 to Hyrum would provide that community with its first local transmission service, and "[s]ince Station KNYN(FM) is not on the air, the reallocation would not result in the removal of an 'existing service' at Fort Bridger." *See NPRM* at ¶ 3. In addition, the Commission recognized that the engineering analysis submitted along with the Petition demonstrated that Channel 256C can be reallocated to Hyrum in full compliance with the Commission's minimum distance separation requirements. *Id.*

In the *NPRM*, the Commission noted that the allotment of Channel 256C3 at Hyrum would provide a 70 dBu signal over 100% of the Logan, Utah Urbanized Area. As a result, the

² On April 1, 1999, the construction permit for Station KNYN(FM) at Fort Bridger, Wyoming, was assigned from L. Topaz Enterprises, Inc. to Frandsen. *See* File No. BAPH-990119GQ. A Notice of Consummation of this assignment was filed with the Commission on June 22, 1999.

Commission requested a potential gain and loss area study and a *Tuck* analysis to determine whether Hyrum is sufficiently independent of Logan to merit a first local service preference or whether it should be credited with all of the authorized services in the Logan Urbanized Area. *NPRM* at ¶ 3 (citing *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988)).

As demonstrated below, Hyrum is an independent community, deserving of a first local service preference. Further, because Station KNYN is not on the air, there would be no “loss” to the community of Fort Bridger and there would be a significant “gain” to the community of Hyrum, which has a population of 4,829, almost 40 times that of Fort Bridger, which has a population of only 150 people. Consequently, the Commission should amend the FM Table of Allotments to allot Channel 256C3 from Fort Bridger, Wyoming to Hyrum, Utah, and should modify the license for KNYN(FM) to specify operation on Channel 256C3 at Hyrum.

DISCUSSION

I. Frandsen Declares His Intent to Promptly Apply For Channel 256C3 at Hyrum and Promptly Construct the Facilities.

If the proposal to reallocate Channel 256C3 from Fort Bridger, Wyoming to Hyrum, Utah is granted, Frandsen intends to file the appropriate application for Channel 256C3 at Hyrum, Utah and, if authorized, will promptly construct the facilities contemplated therein. However, Frandsen may withdraw this interest and ask that the channel remain in Fort Bridger, as stated in his Comments filed on August 16, 1999, if either of his two new station applications are granted in the September 28 auction of new broadcast channels.

II. Frandsen Satisfies the Factors Under the Commission's *Tuck* Analysis

When an applicant proposes an allotment to a community for its first local service preference, and that community is located in an Urbanized Area, or the 70 dBu contour of the station covers 50% or more of an Urbanized Area, a presumption of interdependence is created. *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). The Census Bureau defines an Urbanized Area as consisting of a central community and adjacent densely settled areas that together have a minimum of 50,000 persons. If the presumption of interdependence is not rebutted, the community is credited with all the local transmission services licensed to communities within the Urbanized Area. *Id.*

Under *Tuck*, the Commission looks at the following factors in determining whether an applicant rebuts a presumption of interdependence and whether the community deserves a first local service preference: (1) the interdependence of the suburban community with the central city; (2) signal population coverage; and (3) size and proximity of the suburban community relative to the adjacent community. *Id.* As demonstrated below, an analysis of the factors in this case will rebut the presumption of interdependence and show that the community of Hyrum deserves a first local service preference.

A. Frandsen Satisfies The Most Important Factor in the *Tuck* Analysis, the Independence of Hyrum from Logan.

The Commission has consistently held that the degree of interdependence between the proposed community and the centralized city in the Urbanized Area is the most important factor in a *Tuck* analysis. *See Farmington, California*, 11 FCC Rcd 8117 (1996). As demonstrated below, the City of Hyrum exists as a community that is completely independent from the City of Logan, and is therefore deserving of a first local service preference.

The Commission breaks down its interdependence analysis into the following characteristics:

1. The extent to which community residents work in Hyrum, rather than Logan

Hyrum is home to a number of local businesses which employ primarily Hyrum residents. For example, Hyrum is home to a large meat packing company, EA Millers, which employs over 1,250 people, including a large number of Hyrum residents. Hyrum also has a business district that is made up of restaurants, shopping centers and banks, including a branch of First Security Bank, one of the largest banks in Utah. There is also a power company, City of Hyrum Power and Light, and a power plant, Upper Power Plant, located in Hyrum, which employ Hyrum residents. Because of the businesses that exist in Hyrum, a large number of the residents of Hyrum work in the community itself, rather than commuting into Logan.

2. Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests

There currently is no media outlet based in Hyrum that would cover the community's local needs and interests. There is no local newspaper or local television station in Hyrum. Therefore, a local radio station is greatly needed to inform the community about items of local interest and importance in Hyrum.

3. Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area

Business owners, residents, the governing body of Hyrum and the leaders of the Mormon church, thorough active organization and participation in the community and its events, perceive Hyrum as being a separate community from Logan. Business owners, including one of the largest banks in Utah, chose to locate the businesses described above in Hyrum. The Mormon church, the

Church of Jesus Christ of Latter Day Saints, the most prevalent religion in Utah, has established two Stakes, or divisions, in Hyrum, made up of twelve Wards, each Ward consisting of over 300 people. Also, business owners, church and community leaders join the residents in sponsoring and organizing a huge Hyrum City Fourth of July Celebration, including a parade and fireworks, an annual Concert in the Park Series, and other festivals, events and celebrations throughout the year that take place and are focused around the community of Hyrum, and are separate from Logan.

4. Whether the specified community has its own local government and elected officials

Hyrum has its own local government and elected officials. The Hyrum city government is comprised of five councilmen and a mayor, who are elected by local Hyrum residents. This governmental body, elected to serve the city of Hyrum exclusively, further demonstrates Hyrum's separateness and independence from Logan.

5. Whether the smaller community has its own zip code or telephone book provided by the local telephone company

Hyrum has its own zip code ("84319"), and, therefore, its own branch of the U. S. Post Office. Hyrum does not have its own telephone book, but neither does Logan, even though Logan's population is much larger than Hyrum's. All the cities in the county, including Logan and Hyrum, are listed together in the county telephone book. Hyrum's separate zip code, however, is further evidence of its independence from Logan.

6. Whether the community has its own commercial establishments, health facilities and transportation systems

Hyrum has its own high school, Mt. Crest High School with 1,471 students, and its own junior high school, South Cache Jr. High School with 1,025 students. It also has its own businesses,

as discussed above. Hyrum makes use of the county hospital, but has several doctors' and dentists' offices within the city limits. Hyrum also has its own power company, power plant and its own sewer treatment plant. In addition, the Utah Department of Parks and Recreation has designated the Hyrum Dam Reservoir as a state recreation area. All of the above show that Hyrum exists on its own, separate from the larger city of Logan.

7. The extent to which the specified community and the central city are part of the same advertising market

It is possible that advertisers in Logan may target Hyrum residents, however, because the cities of Providence and Nibley are closer in distance to Logan and exist between Logan and Hyrum, the residents of these cities would be more effective targets for advertisers than the residents of Hyrum.

8. The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries

Hyrum does not rely on Logan for any of its municipal services. As stated above, Hyrum has its own schools, its own power and sewer company, and its own fire department, the Hyrum City Fire Department. Hyrum uses the county sheriff's department for its police protection and the county hospital for medical emergencies.

As demonstrated above, Hyrum is a completely separate community from Logan and does not rely on the city of Logan for any of its municipal services. Consequently, Hyrum, as a community independent of the Logan Urbanized Area, deserves a first local service preference.

B. The Other Factors in the Tuck Analysis, Size and Proximity of Hyrum to Logan and Signal Population Coverage of KNYN over the Logan Urbanized Area, Are Less Significant.

Hyrum, with a population of 4,829, is approximately 8 miles from Logan, which has a population of about 44,000. Although the distance between the two cities is not great, Hyrum is not included in the Logan City's map of its Urbanized Area. *See Exhibit A.* In fact, two cities, Providence and Nibley, exist between Logan and Hyrum. In addition to the evidence of Hyrum's independence from Logan, as set out above, this geographic evidence demonstrates that Hyrum is not considered part of the Logan metropolitan area.³

Although the proposed allotment of Channel 256C3 at Hyrum would provide a 70 dBu signal over 100% of the Logan Urbanized Area, the independent "characteristics of the specified community rather than the technical aspects of the applicant's proposal" are what the Commission ultimately focuses on in a *Tuck* analysis. *Faye and Richard Tuck*, 3 FCC Rcd 5374 ¶ 28 (1988). Consequently, the independent characteristics of Hyrum as a separate community from Logan, as demonstrated above, rebut the presumption of interdependence despite the proposed allotment's 70 dBu contour coverage of the Logan Urbanized Area.

³ The Commission found that Smithfield, Utah, the community of license for Station KGNT(FM), opposing this allotment, which is only 7 miles from Logan with a population of about 7,500, is sufficiently independent of Logan to qualify for separate status. Consequently, Hyrum, which is 8 miles from Logan, should also qualify for separate status from the Logan Urbanized Area.

III. KNYN(FM)'s Allotment to Hyrum, Utah Will Not Result In Loss of Transmission or Reception Service to Fort Bridger Because KNYN Is Not On the Air

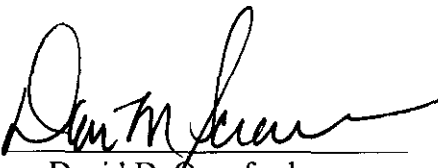
Because KNYN is not on the air, the loss of coverage in transmission or reception service to Fort Bridger based on its reallocation to Hyrum is irrelevant. *See* Exhibit B. There will be no loss of service because there never was any service to this area. The Commission has stated that removal of a station that is not operating from a community is not considered “to present parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service upon which the public has become reliant.” *See Oraibi and Leupp, Arizona*, MM Docket No. 98-179, RM-9344 (rel. August 20, 1999); *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995). The loss area of Fort Bridger contains 28,586 persons, in a sparsely populated, rural area and operating as Class C1 facilities to cover this large area. This is a very unlikely proposition given the expense of such facilities and the sparsity of the population. In contrast, in Hyrum, the gain area contains 117,993 persons, resulting in a net gain of 89,407 persons. Consequently, Station KNYN(FM) will serve 89,407 more people in Hyrum, than in Fort Bridger. Since there is no loss of service to Fort Bridger, the “gain” greatly exceeds the “loss” if the station is allotted to Hyrum, instead of Fort Bridger.

CONCLUSION

For the foregoing reasons, Frandsen respectfully requests that the Commission reallocate Channel 256C3 from Fort Bridger, Wyoming to Hyrum, Utah and modify the license of radio station KNYN(FM) accordingly.

Respectfully submitted,

M. KENT FRANDSEN

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Dated: August 31, 1999

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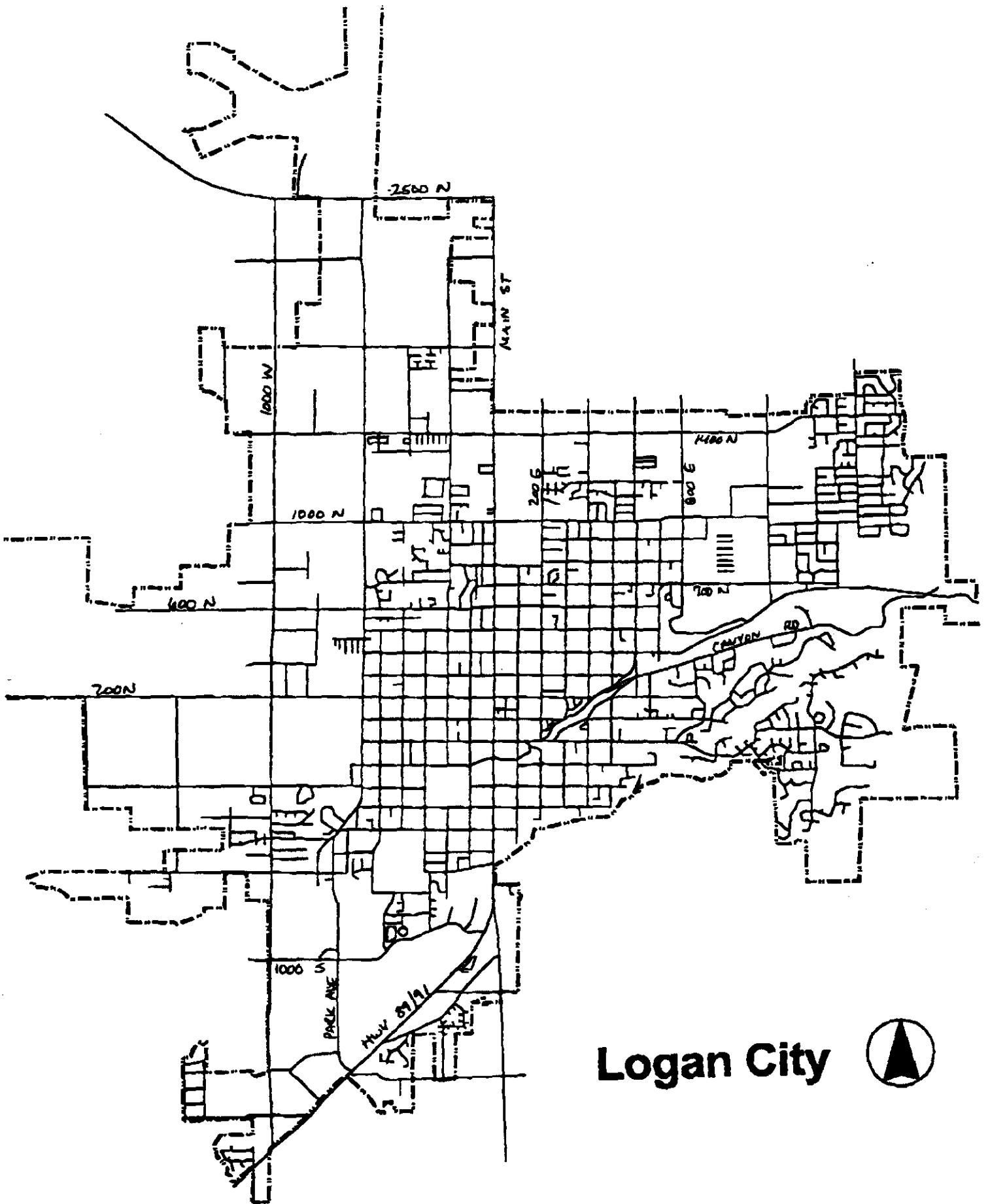
DECLARATION

I, M. Kent Frandsen, permittee of Radio Station KNYN(FM), hereby state, on this 31st day of August, 1999, under penalty of perjury, that I have read the foregoing Reply Comments and that the facts stated therein are true and correct to the best of my knowledge and belief.



M. Kent Frandsen

Exhibit A



Logan City



Exhibit B

du Treil, Lundin & Rackley, Inc.

Consulting Engineers

TECHNICAL EXHIBIT
IN SUPPORT OF
COMMENTS IN THE NOTICE OF PROPOSED RULE MAKING IN
MM DOCKET NO. 99-232
AMENDMENT OF THE FM TABLE OF ALLOTMENTS
FORT BRIDGER, WYOMING AND HYRUM, UTAH

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of FM station KNYN at Fort Bridger, Wyoming in response to the Commission's Notice of Proposed Rule Making ("NPRM") in MM Docket No. 99-232 (RM-9321, DA 99-1233, adopted June 16, 1999, released June 25, 1999). In the NPRM, the Commission proposed to amend Section 73.202(b) by downgrading channel 256C1 to channel 256C3 and reallocating channel 256C3 from Fort Bridger, Wyoming to Hyrum, Utah and modifying the construction permit of KNYN to reflect the new community of license. The purpose of this exhibit is to provide the potential gain and loss area study requested by the Commission in the NPRM.

Figure 1, attached, is a map showing the FM 1 mV/m primary service contours for the authorized KNYN operation on channel 256C1 at Fort Bridger and for the proposed operation on channel 256C3 at Hyrum, Utah. Maximum facilities and uniform terrain were used to determine the contour locations. The 1 mV/m "gain" and "loss" areas are also indicated. It has been determined that the gain area contains 117,993 persons and the loss area contains 28,586 persons, resulting in a "net" gain of 89,407 persons.

du Treil, Lundin & Rackley, Inc.

Consulting Engineers

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Fort Bridger, Wyoming and Hyrum, Utah

Figure 1 also provides an analysis of AM and FM reception services available to the gain and loss areas.¹ For FM stations the 1 mV/m contour is depicted, and for Class A AM station WWL the 0.5 mV/m contour is shown. For other AM stations, the nighttime-interference-free (NIF) is depicted.

Figure 2 tabulates the AM and FM stations whose contours are shown on Figure 1. Only those FM and AM services necessary to provide at least five (5) fulltime aural services to the gain and loss areas have been shown on Figure 4. The letters identify the AM and FM service contours of stations tabulated on Figure 2.

It has been determined that there are areas within the loss area that will receive less than 5 aural services. Those areas are identified by numbers on Figure 1. The following tabulates the population within the areas receiving less than 5 services.

Number of Aural Services	1990 Census Population
0	3,267
1	2,712
2	4,412
3	300
4	248

FM 1 mV/m and AM NIF Coverage Contours

The FM predicted coverage contours were calculated in accordance with the provisions of Section 73.313, except that uniform terrain was presumed in all directions. Distances to AM contours were based on either

¹The determination of available reception services was based on the criteria set forth in footnote 1 of the Notice of Proposed Rule Making in MM Docket No. 96-219 (DA 96-1774; adopted October 25, 1996, released November 1, 1996).

du Treil, Lundin & Rackley, Inc.

Consulting Engineers

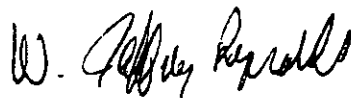
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Fort Bridger, Wyoming and Hyrum, Utah

nondirectional radiation pattern values or standard radiation pattern values obtained from the FCC's AM database. FCC Figure M-3 conductivity employed along all azimuths.

Population and Area

The population within each FM primary service contour (1 mV/m) and each gain and loss area was calculated using a computer program that utilizes the 1990 U.S. Census database of "population centroids". The program adds the populations of those U.S. Census designated areas whose centroid was within each service area. The area within each FM primary service contour was calculated using a root mean square algorithm.

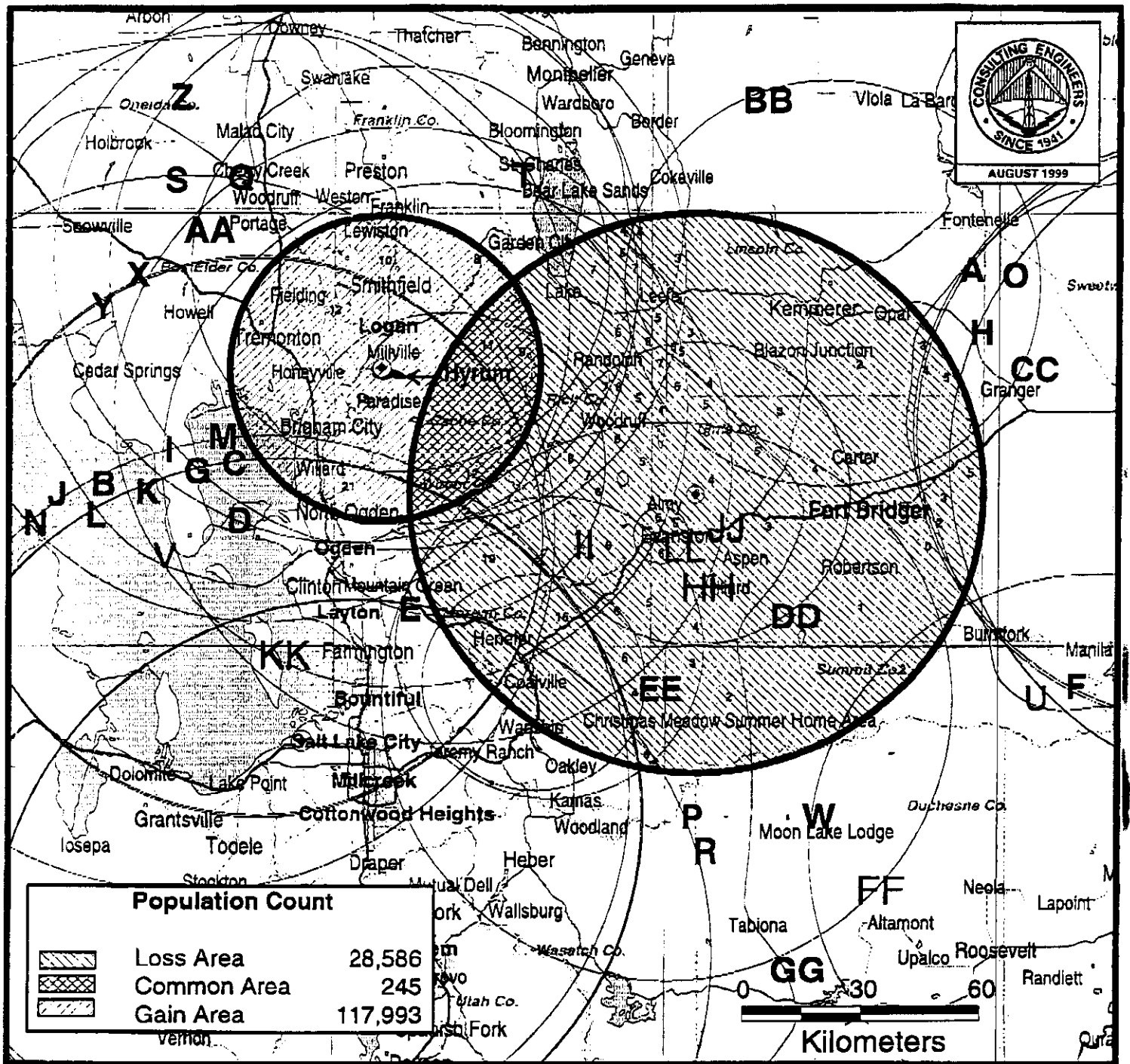


W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237-6019

August 31, 1999

Figure 1



GAIN AND LOSS AREA STUDY

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

Figure 2

Tabulation of Other Aural (AM/FM) Services**FM Stations**

	Call Sign	City of license	State	Channel
A	KFRZ	Green River	WY	221C
B	KUBL	Salt Lake City	UT	227C
C	KODJ	Salt Lake City	UT	231C
D	KVFX	Logan	UT	233C
E	KZHT	Provo	UT	235C
F	KYCS	Rock Springs	WY	236C
G	KXRK	Provo	UT	242C
H	KQSW	Rock Springs	WY	243C
I	KISN FM	Salt Lake City	UT	246C
J	KBZN	Ogden	UT	250C
K	KBEE FM	Salt Lake City	UT	254C
L	KURR	Bountiful	UT	258C
M	KSFI	Salt Lake City	UT	262C
N	KBER	Ogden	UT	266C
O	KMKX	Rock Springs	WY	283C
P	KOSY	Spanish Fork	UT	293C
Q	KRAR	Brigham City	UT	295C
R	KENZ	Orem	UT	298C
S	KSNU	Roy	UT	300C
T	KNFL	Tremonton	UT	285C
U	KUWZ	Rock Springs	WY	214C
V	KUSU FM	Logan	UT	218C
W	KXRQ	Roosevelt	UT	232C
X	KYFO FM	Ogden	UT	238C
Y	KYFO FM	Ogden	UT	238C
Z	KKEX	Preston	ID	241C
AA	KBLQ FM	Logan	UT	225C2
BB	New	Diamondville	WY	287C2
CC	KAOX	Kemmerer	WY	297C2
DD	KOTB	Evanston	WY	291C3
EE	ALC	Randolph	UT	272C
HH	ALC	Coalville	UT	222C3
II	ALC	Heartsville	UT	276C3
JJ	ALC	Oakley	UT	268C1
KK	ALC	Brigham City	UT	264C

AM Stations

	Call Sign	City	State	Frequency
GG	KSL	Salt Lake City	UT	1,160
LL	KEVA	Evanston	WY	1,240

CERTIFICATE OF SERVICE

I, Lena Mosley, hereby certify that I have, on this 31st day of August 1999, caused a copy of the foregoing **"Reply Comments"** to be served by first class U.S. mail, postage prepaid, to the following:

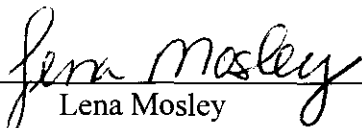
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***Hand Delivery**